



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 2817-99

24 July 2000



Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 7 July 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. In addition, it noted that a service member has completed 20 years of active duty is not eligible for disability severance pay, but may be retired by reason of physical disability with a rating of 0% or higher. The Board also noted that, notwithstanding your belief to the contrary, the portion of your retired pay attributable to your disability is not taxable.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1830
Pers82
Ser 005
7 Jul 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: COMMENTS AND RECOMMENDATIONS ICO [REDACTED]
[REDACTED]

Ref: (a) Pers-00ZCB ltr of 5 June 2000

Encl: (1) BCNR File with Microfiche Service Record
(2) Faxed copy of Medical Board ICO EN1 Smith

1. Reference (a) requested comments and recommendations in subject member's case. Specifically, Petitioner requests correction to reason for separation.
2. Review of available records and member's petition indicate that he was medically retired on 28 November 1989 under 10 USC 1201 with a permanent Disability rating of 10%.
3. On 16 August 1988 [REDACTED] requested a Non-disability retirement for 30 June 1989 and was approved. On 25 July 1989, [REDACTED] signed a NAVPERS 1070/613 agreeing to remain on active duty to receive medical treatment. A medical board was convened and on 8 November 1989 the President of the Physical Evaluation Board issued a notification of decision to permanently retire the member from the service with a Veterans Administration Disability Code number of 5003 with a rating of 10%. Furthermore, the members retirement took place on the 28th of the month and not at the end of the month per SECNAV policy for non-disability retirements.
4. Enclosure (2) is provided to substantiate recommendation. It is recommended that Petty Officer Emery's petition for correction to his records be denied as stated in paragraphs 2 and 3 above. Enclosure (1) is returned.

R. D. LEWIS
Deputy Director, Retirements,
Fleet Reserve and Disability Retirements